Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1275

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Petitioner,

vs.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY OF PETITIONER, NATURAL GAS PIPELINE COMPANY OF AMERICA, TO MEMORANDUM OF FEDERAL POWER COMMISSION

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May 15, 1974.

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Natural Gas Pipeline Company of America (Natural), Petitioner herein, submits this further reply brief in support of its petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in the case and in response to the "Memorandum for the Federal Power Commission" (Memorandum) received May 9, 1974. Natural previously filed a reply brief April 4, 1974 in answer to the briefs in opposition of respondents.

1. The Federal Power Commission (Commission) does not oppose the granting of Natural's petition for a writ of certiorari

or accept the Court of Appeals' "view of the applicable legal standards. . . ." (Memorandum, p. 5.) Nevertheless, the Solicitor General determined not to file a petition because of a judgment that "in the present posture of the case", which is remanded for further proceedings, the decision of the Court of Appeals "does not seriously interfere with the Commission's performance of its regulatory responsibilities under the Natural Gas Act." (Memorandum, pp. 5-6.) The Memorandum also referred to the "interlocutory nature" of the Court of Appeals' Order. (Memorandum, p. 5.)

2. Natural sympathizes with the Commission's desire to conform to the Court of Appeals' Order and to attempt to dispose of the remanded proceeding in accordance with the Court of Appeals' decision. However, Natural believes the Commission has been unduly optimistic about the purport of that decision for the remanded proceeding and has overlooked the restraints it imposes on the proper exercise of the Commission's duties under the Natural Gas Act.

3. As Natural has demonstrated in its petition for certiorari and its reply brief, the Court of Appeals' decision prevents the Commission from according the various factors present here their proper weight, despite the fact that balancing of factors is a task delegated to the Commission and not the courts. Absent review by this Court, the interpretation of Section 7(b) of the Natural Gas Act by the Court of Appeals is final and, despite the "interlocutory nature" of the remanded proceeding, will be binding upon the Commission's further deliberations in this proceeding and will have an effect as precedent for other Commission proceedings. By prescribing not only the factors to be considered by the Commission but also the weight to be assigned such factors, the Court of Appeals has imposed upon the Commission a fixed pattern of decision which precludes the Commission from properly discharging its statutory duties under Section 7(b) of the Natural Gas Act.

4. The La Gloria Field is currently unable to deliver gas sufficient to supply both the quantities certificated and contracted to Natural not at issue in this proceeding and the 81,000 Mcf of gas per day to Transcontinental Gas Pipe Line Corporation (Transco), which is the subject of this abandonment and certificate proceeding. Deliverability from the La Gloria Field continues to decline. In light of these facts and the general nationwide gas shortage which affects both Natural and Transco, Natural has no assurance that, even if its legal rights to the La Gloria Field gas are eventually vindicated by the Commission, any remedy will be available by the time such a determination is reached in the remanded proceeding.

Therefore, the "interlocutory nature" of the proceeding is no justification for deferring review of the Court of Appeals' decision. This Court has recognized that relief under the Natural Gas Act should not be deferred pending further proceedings if such a deferral can be avoided, but should be awarded at the earliest possible moment; *F. P. C.* v. *Tennessee Gas Transmission Co.*, 371 U. S. 145 (1962); *United Gas Improvement Co.* v. *Callery Properties, Inc.*, 382 U. S. 223 (1965). See also *Public Service Commission of the State of New York, et al.* v. *F. P. C.*, Nos. 24716, *et al.* (D. C. Cir., March 25, 1974); Mimeo at pp. 101-106. A departure from this principle here might render review meaningless when finally obtained.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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